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US DISTRICT COURT
DISTRICT OF ALASKA

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7 Attorneys for SPENCER ROCK PRODUCTS, INC. and
8 ROBERT A. LAPORE

9
10 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

11 UNITED STATES OF AMERICA for the)
12 use of NORTH STAR TERMINAL &)
13 STEVEDORE COMPANY, d/b/a Northern)
14 Stevedoring & Handling, and NORTH)
STAR TERMINAL & STEVEDORE)
COMPANY, d/b/a Northern Stevedoring &)
Handling, on its own behalf,)

15 Plaintiffs,)

16 and)

17 UNITED STATES OF AMERICA for the)
18 use of SHORESIDE PETROLEUM, INC.,)
d/b/a Marathon Fuel Services, and)
19 SHORESIDE PETROLEUM, INC., d/b/a)
Marathon Fuel Services, on its own behalf,)

20 Intervening Plaintiffs)

21 and)

22 METCO, INC.)

23 Intervening Plaintiff,)

24 vs.)

25 NUGGET CONSTRUCTION, INC.;)
26 SPENCER ROCK PRODUCTS, INC.;)
UNITED STATES FIDELITY AND)
27 GUARANTY COMPANY; and ROBERT)
A. LAPORE,)

28 Defendants.)

CASE NO.: A98-009 CIV (HRH)

**SPENCER ROCK AND LAPORE'S
AMENDED ANSWER TO NORTH
STAR'S AMENDED COMPLAINT**

1 COMES NOW Defendants SPENCER ROCK PRODUCTS, INC (hereinafter "SPENCER"
2 and ROBERT A. LAPORE (hereinafter "LAPORE"), who hereby file their amended answer and
3 affirmative defenses to the Amended Complaint of the North Star Terminal & Stevedore Company
4 d/b/a Northern Stevedoring & Handling (hereinafter "NORTH STAR") as follows:

5 **PARTIES**

6 1. In answering Paragraph 1 of the Amended Complaint, SPENCER and LAPORE are
7 without sufficient knowledge or information to form a belief as to the truth of the allegations
8 contained in said paragraph, and on that basis deny each and every allegation contained therein,
9 except that SPENCER and LAPORE admit that NORTH STAR provided services for the project
10 in this case.

11 2. In answering Paragraph 2 of the Amended Complaint, SPENCER and LAPORE admit
12 all the allegations therein.

13 3. In answering Paragraph 3 of the Amended Complaint, SPENCER and LAPORE admit
14 all the allegations therein.

15 4. In answering Paragraph 4 of the Amended Complaint, SPENCER and LAPORE admit
16 all the allegations therein.

17 5. In answering Paragraph 5 of the Amended Complaint, SPENCER and LAPORE admit
18 all the allegations therein, except those asserted in the second sentence, which they deny.

19 **JURISDICTION**

20 6. In answering Paragraph 6 of the Amended Complaint, SPENCER and LAPORE admit
21 the allegations contained in said paragraph.

22 **GENERAL ALLEGATIONS**

23 7. In answering Paragraph 7 of the Amended Complaint, SPENCER and LAPORE deny
24 entering into a contract with plaintiff, and are without sufficient knowledge or information to
25 form a belief as to the truth of the remaining allegations contained in the first sentence of said
26 paragraph, and on that basis deny each and every allegation contained therein. They admit all
27 other allegations in said paragraph.

28 8. In answering Paragraph 8 of the Amended Complaint, SPENCER and LAPORE deny

1 the allegations as to their alleged actions or inactions, and are without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in said paragraph, and on
3 that basis deny each and every allegation contained therein, except the allegations asserted in the
4 last two sentences of said paragraph, which they admit.

5 9. In answering Paragraph 9 of the Amended Complaint, SPENCER and LAPORE admit
6 that the billings have not been paid by these defendants. SPENCER and LAPORE admit that
7 work on the Homer Spit Repair and Extension Project has been finished by Nugget and that
8 Nugget has been fully paid for that work. SPENCER and LAPORE are without sufficient
9 knowledge or information to form a belief as to the truth of the remaining allegations contained
10 in said paragraph, and on that basis deny each and every allegation contained therein.

11 10. In answering Paragraph 10 of the Amended Complaint, SPENCER and LAPORE are
12 without sufficient knowledge or information to form a belief as to the truth of the allegations
13 regarding Nugget contained in said paragraph, and on that basis deny each and every allegation
14 contained therein. Defendants deny all the allegations contained in paragraph 10 as to
15 SPENCER and LAPORE.

16 11. In answering Paragraph 11 of the Amended Complaint, SPENCER and LAPORE are
17 without sufficient knowledge or information to form a belief as to the truth of the allegations
18 contained in said paragraph, and on that basis deny each and every allegation contained therein.

19 12. In answering Paragraph 12 of the Amended Complaint, SPENCER and LAPORE are
20 without sufficient knowledge or information to form a belief as to the truth of the allegations
21 contained in said paragraph, and on that basis deny each and every allegation contained therein.

22 **CAUSES OF ACTION**

23 **MILLER ACT CLAIMS**

24 13. In answering Paragraph 13 of the Amended Complaint, SPENCER and LAPORE
25 reassert their corresponding responses to the incorporated paragraphs.

26 14. In answering Paragraph 14 of the Amended Complaint, SPENCER and LAPORE
27 admit all allegations therein.

28 15. In answering Paragraph 15 of the Amended Complaint, SPENCER and LAPORE

1 admit all allegations therein.

2 16. In answering Paragraph 16 of the Amended Complaint, SPENCER and LAPORE
3 admit that NORTH STAR provided labor, material, services and equipment to Nugget, and are
4 without sufficient knowledge or information to form a belief as to the truth of the remaining
5 allegations contained in said paragraph, and on that basis deny each and every allegation
6 contained therein.

7 17. In answering Paragraph 17 of the Amended Complaint, SPENCER and LAPORE
8 assert that these allegations concern other parties only and thus do not require a response by
9 SPENCER and LAPORE.

10 18. In answering Paragraph 18 of the Amended Complaint, SPENCER and LAPORE
11 assert that the first sentence is comprised solely of legal conclusions, and thus does not require a
12 response. SPENCER and LAPORE are without sufficient knowledge or information to form a
13 belief as to the truth of the allegations contained in the second sentence of said paragraph, and on
14 that basis deny each and every allegation contained therein. They admit all other allegations in
15 Paragraph 18.

16 19. In answering Paragraph 19 of the Amended Complaint, SPENCER and LAPORE
17 admit all allegations therein.

18 20. In answering Paragraph 20 of the Amended Complaint, SPENCER and LAPORE
19 admit all allegations therein.

20 21. In answering Paragraph 21 of the Amended Complaint, SPENCER and LAPORE
21 admit all allegations therein.

22 22. In answering Paragraph 22 of the Amended Complaint, SPENCER and LAPORE
23 admit all allegations therein.

24 23. In answering Paragraph 23 of the Amended Complaint, SPENCER and LAPORE are
25 without sufficient knowledge or information to form a belief as to the truth of the allegations
26 contained in said paragraph, and on that basis deny each and every allegation contained therein.

27 STATE LAW CLAIMS

28 24. In answering Paragraph 24 of the Amended Complaint, SPENCER and LAPORE

1 reassert their corresponding responses to the incorporated paragraphs.

2 25. In answering Paragraph 25 of the Amended Complaint, SPENCER and LAPORE
3 assert that this paragraph is comprised solely of a recitation of the nature of claims, and thus does
4 not require a response.

5 BREACH OF CONTRACT

6 26. In answering Paragraph 26 of the Amended Complaint, SPENCER and LAPORE
7 reassert their corresponding responses to the incorporated paragraphs. They deny the allegations
8 contained in the second and third sentences, and the last two sentences, of Paragraph 26. They
9 are without sufficient knowledge or information to form a belief as to the truth of the allegations
10 contained in the remainder of said paragraph, and on that basis deny each and every allegation
11 contained therein.

12 PROMISSORY ESTOPPEL

13 27. In answering Paragraph 27 of the Amended Complaint, SPENCER and LAPORE
14 reassert their corresponding responses to the incorporated paragraphs. They are without
15 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
16 the remainder of said paragraph, and on that basis deny each and every allegation contained
17 therein.

18 QUASI-CONTRACT

19 28. In answering Paragraph 28 of the Amended Complaint, SPENCER and LAPORE
20 reassert their corresponding responses to the incorporated paragraphs. They are without
21 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
22 the remainder of said paragraph, and on that basis deny each and every allegation contained
23 therein.

24 AGENCY

25 29. In answering Paragraph 29 of the Amended Complaint, SPENCER and LAPORE
26 reassert their corresponding responses to the incorporated paragraphs. They are without
27 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
28 the last two sentences of said paragraph, and on that basis deny each and every allegation

1 contained therein. They admit the remaining allegations.

2 DETRIMENTAL RELIANCE

3 30. In answering Paragraph 30 of the Amended Complaint, SPENCER and LAPORE
4 reassert their corresponding responses to the incorporated paragraphs. SPENCER and LAPORE
5 admit that Nugget took charge of NORTH STAR's loading activities; that Nugget refuse to pay
6 SPENCER and LAPORE; that Nugget rendered SPENCER and LAPORE unable to pay NORTH
7 STAR; that SPENCER and LAPORE have not paid NORTH STAR; and are informed and
8 believe, and thereon admit, that NORTH STAR was aware that Randy Randolph was working
9 with SPENCER and LAPORE, and also had worked or was working with Nugget. SPENCER
10 and LAPORE are without sufficient knowledge or information to form a belief as to the truth of
11 the remaining allegations contained in said paragraph, and on that basis cannot admit them.

12
13 UNJUST ENRICHMENT AND RESTITUTION

14 31. In answering Paragraph 31 of the Amended Complaint, SPENCER and LAPORE
15 reassert their corresponding responses to the incorporated paragraphs. SPENCER and LAPORE
16 deny that North Star conferred a benefit upon them. SPENCER and LAPORE are informed and
17 believe, and thereon admit, that Nugget was paid by the Federal Government for work and
18 services rendered by NORTH STAR. SPENCER and LAPORE deny that they have been
19 unjustly enriched. They are without sufficient knowledge or information to form a belief as to
20 the truth of the remaining allegations contained in said paragraph, and on that basis deny them.

21 QUANTUM MERUIT

22 32. In answering Paragraph 32 of the Amended Complaint, SPENCER and LAPORE
23 reassert their corresponding responses to the incorporated paragraphs. They are without
24 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
25 said paragraph, and on that basis deny each and every allegation contained therein.

26 MISREPRESENTATION AND NONDISCLOSURE

27 33. In answering Paragraph 33 of the Amended Complaint, SPENCER and LAPORE
28 reassert their corresponding responses to the incorporated paragraphs. SPENCER and LAPORE

1 deny that they made any misrepresentations, nondisclosures, or omissions of material fact to
2 anyone, and deny that they made any representations or disclosures falsely, deceitfully, or
3 fraudulently or with any knowing or deliberate intent to deceive anyone. They are without
4 sufficient knowledge or information to admit the truth of the allegations contained in said
5 paragraph as to the remaining defendants, and on that basis deny them.

6 NEGLIGENCE

7 34. In answering Paragraph 34 of the Amended Complaint, SPENCER and LAPORE
8 reassert their corresponding responses to the incorporated paragraphs. They deny that they
9 misled anyone. They are without sufficient knowledge or information to form a belief as to the
10 truth of the remaining allegations contained in said paragraph, and on that basis deny those
11 allegation contained therein.

12 TORTIOUS INTERFERENCE OF NORTH STAR'S AGREEMENTS AND PROSPECTIVE
13 ECONOMIC ADVANTAGE
AND CONTRACTUAL OR BUSINESS OPPORTUNITIES

14 35. In answering Paragraph 35 of the Amended Complaint, SPENCER and LAPORE
15 reassert their corresponding responses to the incorporated paragraphs. SPENCER and LAPORE
16 admit that Nugget knew, or should have known, of SPENCER's arrangements with NORTH
17 STAR for NORTH STAR to provide services in connection with the Homer Spit project.
18 SPENCER and LAPORE admit that Nugget exerted control and overreaching with respect to
19 SPENCER and LAPORE's operations. SPENCER and LAPORE admit that Nugget improperly
20 intercepted and rechanneled funds to itself which would otherwise have been available to
21 SPENCER and LAPORE to pay NORTH STAR and other similarly situated creditors. They are
22 without sufficient knowledge or information to admit the truth of the remaining allegations
23 contained in said paragraph, and on that basis deny them.

24 EQUITABLE SUBORDINATION

25 36. In answering Paragraph 36 of the Amended Complaint, SPENCER and LAPORE
26 reassert their corresponding responses to the incorporated paragraphs. They admit that Nugget
27 unfairly used its power and control over SPENCER and LAPORE to intercept funds otherwise
28 due SPENCER. They also admit that Nugget was paid by the federal government for what

1 NORTH STAR did in connection with the Homer Spit Project. They are without sufficient
2 knowledge or information to form a belief as to the truth of the remaining allegations contained
3 in said paragraph, and on that basis deny each and every allegation contained therein.

4 CONSTRUCTIVE TRUST

5 37. In answering Paragraph 37 of the Amended Complaint, SPENCER and LAPORE
6 reassert their corresponding responses to the incorporated paragraphs. SPENCER and LAPORE
7 admit that Nugget exerted control over SPENCER and LAPORE. They also admit that Nugget
8 unfairly obtained a preferential position to money from the Federal Government for work done
9 by NORTH STAR in connection with the Homer Spit Project, and that Nugget should not, in
10 equity and good conscience, be allowed to hold and enjoy such funds. SPENCER and LAPORE
11 are without sufficient knowledge or information to form a belief as to the truth of the remaining
12 allegations contained in said paragraph, and on that basis deny each and every allegation
13 contained therein.

14 BAD FAITH

15 38. In answering Paragraph 38 of the Amended Complaint, SPENCER and LAPORE are
16 without sufficient knowledge or information to form a belief as to the truth of the allegations
17 contained in said paragraph, and on that basis deny each and every allegation contained therein.

18 PUNITIVE DAMAGES

19 39. In answering Paragraph 39 of the Amended Complaint, SPENCER and LAPORE are
20 without sufficient knowledge or information to admit the truth of the allegations regarding other
21 defendants contained in said paragraph, and on that basis deny them. SPENCER and LAPORE
22 deny all the allegations regarding themselves.

23 **FIRST AFFIRMATIVE DEFENSE**

24 SPENCER and LAPORE allege that NORTH STAR'S Amended Complaint fails to state
25 a claim against these defendants upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Defendants are informed and believe, and based upon such information and belief allege,
28 that third parties, and not these defendants, caused the damages, if any, as alleged by NORTH

1 STAR.

2 **THIRD AFFIRMATIVE DEFENSE**

3 Defendants allege that NORTH STAR'S claims are barred by the equitable defense of
4 laches and unclean hands.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Defendants allege that NORTH STAR failed to mitigate its damages, if any, thereby
7 barring plaintiff from recovering any damages to the extent they could have been reduced or
8 avoided.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 Defendants allege that the intervening and/or supervening intentional acts or negligent
11 acts of NORTH STAR and/or one or more third parties, other than Defendants, were responsible
12 for and proximately contributed to the damages alleged to have been sustained by NORTH
13 STAR, if any such damages were sustained by NORTH STAR, and that any damage awarded to
14 NORTH STAR hereunder should be recoverable from each party only in direct proportion to the
15 respective degree of fault attributed to each such party.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendants allege that NORTH STAR has waived any rights alleged in the Amended
18 Complaint.

19 WHEREFORE, SPENCER and LAPORE pray:

- 20 1. That NORTH STAR take nothing by way of the Amended Complaint;
21 2. For costs and expenses of litigation;
22 3. For such other relief as the court deems just and proper.

23 Dated: December 5, 2005

HERRIG, VOGT & STOLL, LLP

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Dated:

PAUL D. STOCKLER LAW OFFICE



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Alaska Bar #8606032
Attorneys for SPENCER ROCK
PRODUCTS, INC. and
ROBERT A. LAPORE

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

3 UNITED STATES OF AMERICA for the use of NORTH)
4 STAR TERMINAL & STEVEDORE COMPANY, d/b/a)
5 NORTHERN STEVEDORING & HANDLING, and)
6 NORTH STAR TERMINAL & STEVEDORE COMPANY,)
7 d/b/a NORTHERN STEVEDORING & HANDLING, on)
8 it own behalf,)

9 Plaintiffs,)

10 and)

11 UNITED STATES OF AMERICA for the use of)
12 SHORESIDE PETROLEUM, INC., d/b/a)
13 MARATHON FUEL SERVICE, on its own behalf,)

14 Intervening Plaintiffs,)

15 and)

16 METCO, INC.,)

) No. A98-009 CIV (HRH)

17 Intervening Plaintiff,)

18 vs.)

19 NUGGET CONSTRUCTION, INC.; SPENCER ROCK)
20 PRODUCTS, INC.; UNITED STATES FIDELITY AND)
21 GUARANTY COMPANY; and ROBERT A. LAPORE,)

22 Defendants.)
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CERTIFICATE OF SERVICE

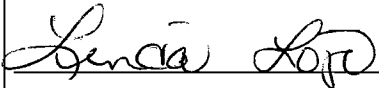
I hereby certify that a true and correct copy of the foregoing document was delivered via
Hand delivery this 6th day of December 2005.

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